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Government Gazette

REPUBLIC OF SOUTH AFRICA

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THE PRESIDENCY

No. 17

16 January 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 48 of 2013: South African Weather Service Amendment Act, 2013



AIDS HELPLINE: 0800-123-22 Prevention is the cure

- (d) by the insertion after the definition of “advisory services” of the following definitions:
- “**Air Quality Act**” means the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
“**ambient air**” has the meaning assigned to it in section 1 of the Air Quality Act; 5
“**ambient air quality forecast**” means a prediction or estimation of ambient air quality at some time in the future using recognised air quality forecasting techniques or methodologies;
“**ambient air quality information**” means information regarding ambient air quality generated by— 10
(i) the NAAQMN in terms of this Act and the Air Quality Act; or
(ii) a private entity’s ambient monitoring station that feeds into the SAAQIS in terms of a memorandum of understanding;
“**ambient air quality warning**” means an alert of exceedance or forecast exceedance of ambient air quality standards established in terms of the Air Quality Act;” 15
- (e) by the substitution for the definition of “Chief Executive Officer” of the following definition:
- “**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 13(1) [and includes the interim Chief Executive Officer contemplated in section 18(6)];” 20
- (f) by the insertion after the definition of “Minister” of the following definitions:
- “**NAAQMN**” means the National Ambient Air Quality Monitoring Network that provides ambient air quality information to the SAAQIS and consists of a network of government-owned ambient air quality monitoring stations located around the country; 25
“**national framework**” means the national framework established in terms of section 7(1) of the Air Quality Act;
“**prescribe**” means prescribe by regulation;” 30
- (g) by the insertion after the definition of “regulations” of the following definitions:
- “**SAAQIS**” means the South African Air Quality Information System, and refers to the electronic information management system established in accordance with the national framework established in terms of section 7(1) of the Air Quality Act; 35
“**severe weather**” means an extreme meteorological event or phenomenon, which represents a real hazard to human life or property and has the potential to cause damage, serious social disruption, loss of human life, or economic loss; 40
“**severe weather warning**” means an alert issued by the Weather Service with regard to severe weather which includes an advisory, watch or warning alert;” and
- (h) by the insertion after the definition of “specialised service” of the following definitions: 45
- “**warning alert**” means an alert calling for action due to a very high certainty of a severe weather hazard that is already occurring or imminent within 24 hours and that could lead to disruptive and disastrous conditions;
“**watch alert**” means an alert calling for preparedness to weather hazards that most likely will occur within one to three days and that could lead to disruptive and disastrous conditions;” 50

Insertion of sections 2A and 2B in Act 8 of 2001

2. The following sections are hereby inserted in the principal Act, after section 2:

“Determination of policy

2A. (1) The Minister must, after consultation with the Board, determine and publish the policy within which the Weather Service must exercise its powers and perform its functions. 5

(2) The Minister may, after consultation with the Board, amend, substitute or withdraw the policy determined in terms of subsection (1), and must publish the amended policy.

(3) The Minister must, 30 days before the final publication of a policy contemplated in subsections (1) and (2), table the policy in Parliament. 10

(4) The Minister must, within six months after the commencement of the South African Weather Service Amendment Act, 2013, table the existing policies in Parliament.

Minister’s supervisory powers 15

2B. (1) The Weather Service must exercise its powers and perform its functions subject to the policy determined in terms of section 2A(1), the norms and standards contemplated in subsection (2)(b) and any directives issued by the Minister in terms of subsection (2)(c). 20

(2) The Minister— 20

(a) must monitor the exercise of powers and performance of the functions of the Weather Service against the policy determined in terms of section 2A(1);

(b) may set norms and standards for the Weather Service to exercise its powers and perform its functions; or 25

(c) must issue directives to the Weather Service on non-compliance with the policy determined in terms of section 2A(1) or the norms and standards issued in terms of subsection (2)(b), to ensure the effective and efficient functioning of the Weather Service, 30

for the achievement of the objectives of this Act.”

Amendment of section 3 of Act 8 of 2001

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) to maintain, extend and improve the quality of meteorological [service] and ambient air quality-related information services for the benefit of all South Africans;” 35

(b) by the substitution for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) to ensure the ongoing collection of meteorological and ambient air quality data over South Africa and surrounding southern oceans for the use by current and future generations; 40

(d) to be the long-term custodian of a reliable national climatological and ambient air quality record;”;

(c) by the deletion of the word “and” at the end of paragraph (g);

(d) by the substitution for paragraph (h) of the following paragraph: 45

“(h) to fulfill such other weather-related or ambient air quality information international obligations as the Minister may direct[.]; and”; and

(e) by the addition of the following paragraph:

“(i) to be the custodian of the SAAQIS.” 50

Amendment of section 4 of Act 8 of 2001

4. Section 4 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) of the following paragraphs, after paragraph (a):

- “(aA) provide such ambient air quality information services as is necessary to achieve the objectives of the Air Quality Act; 5
- (aB) collect ambient air quality data over the Republic of South Africa;
- (aC) act as the custodian of the SAAQIS;
- (aD) manage, operate, maintain and develop NAAQMN;”;

(b) by the addition of the following subsections:

- “(5) The Weather Service may issue ambient air quality forecasts. 10
- (6) The Weather Service may issue ambient air quality warnings.
- (7) Before issuing ambient air quality warnings the Weather Service must—
- (a) inform the Minister; 15
- (b) provide the Minister with all relevant information pertaining to the ambient air quality warning; and
- (c) afford the Minister a reasonable opportunity to consult with relevant Ministers or any other stakeholder whose area of responsibility may be affected by the ambient air quality warning.”. 20

Amendment of section 5 of Act 8 of 2001

5. Section 5 of the principal Act is hereby amended by the insertion in subsection (2) after subparagraph (i) of paragraph (b) of the following subparagraph:

“(iA) air quality management;”.

Amendment of section 6 of Act 8 of 2001

6. Section 6 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

“The Board must within the policy determined by the Minister in terms of section 2A(1) and in compliance with any norms and standards issued in terms of section 2B(b) and any directive issued in terms of section 2B(c)—”;

(b) by the substitution for paragraphs (c) of the following paragraph:

“(c) set operational policy, standards, and objectives [**within the framework issued by the Minister**] and ensure that the executive management implements these policies, standards and objectives;”;

(c) by the substitution for paragraph (h) of the following paragraph:

“(h) subject to the departmental human resources and transformation framework, set policy for recruitment, training and transformation of the Weather Service;”.

Substitution of section 13 of Act 8 of 2001

7. The following section is hereby substituted for section 13 of the principal Act:

“Chief Executive Officer

13. (1) The members of the Board contemplated in section 5(1)(b) and (c), acting with the concurrence of the Minister, must appoint a person as the Chief Executive Officer in accordance with the process set out in subsections (2), (3), (4) and (5). 45

(2) The Chief Executive Officer must be appointed—

- (a) for a term or terms not exceeding five years; and 50
- (b) on each occasion in terms of the process set out in subsections (3), (4) and (5).

(3) The appointment of the Chief Executive Officer must be made after following a transparent and competitive selection process, which must include an invitation of applications for the post contemplated in subsection (1) by publishing advertisements in the media circulating nationally.

(4) The Board must consider the appointment of the Chief Executive Officer after following the prescribed recruitment and selection process.

(5) A person appointed in terms of subsection (2) must be a fit and proper person with appropriate qualifications and experience to perform the functions of a Chief Executive Officer.

(6) The Chief Executive Officer is employed subject to such terms and conditions of employment as the Board may determine with the concurrence of the Minister.

(7) The Chief Executive Officer must be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(8) The Board must enter into an annual performance agreement with the Chief Executive Officer within three months of his or her employment and thereafter, at the beginning of each financial year.

(9) The Chief Executive Officer is accountable to the Board.

(10) The Chief Executive Officer is responsible for—

- (a) the management of the Weather Service;
- (b) ensuring the exercise of the powers and performance of the functions of the Weather Service; and
- (c) reporting to the Board on aspects of management, the exercise of the powers and performance of the functions of the Weather Service.

(11) When there is a vacancy in the office of the Chief Executive Officer, if the Chief Executive Officer is absent or unable to perform his or her duties, the Chairperson of the Board may, with the concurrence of the members of the Board and the Minister, appoint another employee of the Weather Service to act as the Chief Executive Officer.

(12) The acting Chief Executive Officer has all the powers and may perform all the functions of the Chief Executive Officer.”.

Insertion of section 13A in Act 8 of 2001

8. The following section is hereby inserted in the principal Act after section 13:

“Removal of Chief Executive Officer from office

13A. (1) The Chief Executive Officer vacates his or her office—

- (a) when he or she dies;
- (b) in the case of resignation, on the date the resignation takes effect;
- (c) on expiry of the term of his or her contract of employment; or
- (d) upon having been removed from office in terms of subsection (2).

(2) Subject to subsections (6), (7), (8) and (9), the Board, in concurrence with the Minister, may remove the Chief Executive Officer from office in terms of subsection (1)(d)—

- (a) for misconduct;
- (b) for failing to perform the functions connected with that office or to exercise the powers and to perform the functions adequately, diligently and efficiently;
- (c) if, because of any physical or mental illness or disability, the holder of that office has become incapable of performing or efficiently exercising the powers or performing the functions connected with that office;
- (d) where an irreparable breakdown in the working relationship between the Board and the Chief Executive Officer has occurred;
- (e) for being absent from duty or Board meetings, without the leave of the Board or for good reason.

(3) If the Board for any reason needs to have any allegation or allegations levelled at the Chief Executive Officer investigated, or if the Minister requests an investigation of any matter relating to the Chief Executive Officer, the Board must request the Minister to institute a preliminary investigation.

(4) If the preliminary investigation outcome indicates any of the grounds of removal in subsection (2)(a), (b), (d) or (e), the Minister must, within 60 days, proceed with the independent investigation contemplated in subsection (9).

(5) If the preliminary investigation outcome does not indicate the grounds of removal in subsection (2)(a), (b), (d) or (e) but a lesser transgression, the Board must deal with the allegation or allegations in accordance with its internal disciplinary code.

(6) The Chief Executive Officer may be removed from office for the reasons mentioned in subsections (2)(a), (b), (d) and (e) if the Board is satisfied that removal from office is justified in the circumstances and only—

(a) on a finding to that effect by the Board after disciplinary proceedings contemplated in subsection (13) have been concluded;

(b) on the adoption by the Board of a resolution calling for the Chief Executive Officer's removal from office; and

(c) if the Minister concurs with the finding of the Board; or

(d) in the event that the Minister does not concur with the findings of the Board, but is of the view that some other good cause found during the investigation contemplated in terms of this section justifies the removal of the Chief Executive Officer, the Chief Executive Officer may be removed from office on such good cause shown if the Board concurs with the Minister.

(7) The Chief Executive Officer may be removed from office in the case of subsection (2)(c), if the Board is satisfied that removal from office is justified in the circumstances based on the report and recommendation of a medical practitioner with the necessary expertise.

(8) Where the Chief Executive Officer does not agree with the medical practitioner's report and recommendation contemplated in subsection (7), the Chief Executive Officer is entitled to obtain a second medical opinion from a medical practitioner of his or her choice and to submit such report and recommendation to the Board for consideration.

(9) (a) Where the Chief Executive Officer—

(i) denies, or does not admit the allegation or allegations that are relied upon by the Board for the removal of the Chief Executive Officer in terms of subsection (2)(a), (b), (d) or (e); or

(ii) alleges that the allegation or allegations do not justify removal from office,

the Minister must, within 60 days, appoint an independent investigator to investigate the allegation or allegations levelled at the Chief Executive Officer.

(10) The independent investigator must, as soon as possible, but at least within a period of 60 days of his or her appointment, submit a report containing all the information gathered, any findings and recommendations to the Board.

(11) The independent investigator must provide the Chief Executive Officer with a reasonable opportunity to provide any relevant information to the independent investigator, including a reasonable opportunity to respond to any allegation or show cause why the allegations do not justify his or her removal.

(12) If the Chief Executive Officer, in the opinion of the independent investigator, fails or refuses fully or partially or adequately to co-operate with the independent investigator or in any other manner delays or undermines the investigation, the independent investigator may continue with the investigation in the absence of or without the participation of the Chief Executive Officer.

(13) If there is evidence or information available which may support the allegation or allegations against the Chief Executive Officer or if the

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independent investigator for any reason so recommends, the Board must, within 60 days after receiving the report contemplated in subsection (10), institute disciplinary proceedings against the Chief Executive Officer in accordance with prescribed disciplinary procedure.

(14) The Minister must appoint an independent Chairperson to preside over the disciplinary proceedings.

(15) A disciplinary procedure instituted in terms of this Act must not be postponed, suspended or dispensed with as a result of criminal, civil or other legal action having been instituted, or pending the outcome of such action.

(16) The Minister, after consultation with the Board, may, for any reason he or she deems fit, suspend the Chief Executive Officer from office, pending the outcome of the investigation contemplated in subsection (3) or (9) or disciplinary procedures contemplated in subsection (5) or (13), on any condition as to remuneration or any other matter relating to the employment of the Chief Executive Officer that the Minister, after consultation with the Board, may approve.”.

Amendment of section 14 of Act 8 of 2001

9. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) **[Subject to section 18, the]** Subject to section 6(h), the Chief Executive Officer may, on such terms and conditions of service as may be determined by the Board, appoint **[or have]** such number of employees **[seconded]** to the Weather Service as are necessary, to exercise its powers and enable the Weather Service to perform its functions.”;

(b) by the deletion of subsection (3).

Amendment of section 17 of Act 8 of 2001

10. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[Despite the provisions of]** In accordance with section 49(2)(a) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the **[Chief Executive Officer]** Board is the accounting **[officer]** authority of the Weather Service, and must comply with the provisions of the Public Finance Management Act, 1999.”.

Repeal of section 18 of Act 8 of 2001

11. Section 18 of the principal Act is hereby repealed.

Amendment of section 26 of Act 8 of 2001

12. Section 26 of the principal Act is hereby amended by the addition of the following subsections:

“(4) Ambient air quality data that the Weather Service has not collected itself remains the property of the collector of that ambient air quality data, even if the provision of such ambient air quality data is required by legislation.

(5) The use of such externally sourced ambient air quality data is governed by the objectives of this Act and the Air Quality Act.”.

Amendment of section 27 of Act 8 of 2001

13. Section 27 of the principal Act is hereby amended by the addition of the following subsection, the existing section becomes subsection (1):

“(2) Neither the Weather Service nor any person employed by the weather service nor any other person acting on behalf of the Weather Service is liable for any damage, loss or injury caused by any act performed or omitted in good faith, in the course of exercising a power or performing a function assigned by or under this Act.”.

Amendment of section 28 of Act 8 of 2001

14. Section 28 of the principal Act is hereby amended—
- (a) by the insertion after paragraph (a) of the following paragraphs:
 - “(aA) the recruitment and selection process for the Chief Executive Officer contemplated in section 13; 5
 - “(aB) the disciplinary procedure for the Chief Executive Officer contemplated in section 13A of this Act;”; and
 - (b) by the addition of the following subsection, the existing section becoming subsection (1):
 - “(2) The Minister must table the draft regulations made under subsection (1)(aB) in Parliament, before the final publication of such regulations.” 10

Insertion of section 30A in Act 8 of 2001

15. The following section is hereby inserted in the principal Act after section 30:

“**Offences and penalties** 15

- 30A.** (1) No person may—
- (a) publish, disseminate or distribute in any manner whatsoever any severe weather warning which he or she knows, believes or ought to have reasonably known or suspected—
 - (i) to be false or misleading; or 20
 - (ii) may incite public reaction which may lead to the undue mobilisation of resources, public alarm or evacuations, or economic loss arising from such actions; or
 - (b) impersonate or falsely represent himself or herself to be an employee of the Weather Service or purport to act on behalf of the Weather Service; or 25
 - (c) use official corporate branding from the Weather Service, or corporate branding closely resembling that of the Weather Service, such that it will be difficult for a reasonable person to distinguish between the original and resembling version, with the intention to deceive a member of the public into believing that the document or message presented or disseminated is an official document or message originating from the Weather Service. 30
- (1A) Whenever a person lays a criminal charge relating to an incident contemplated in subsection (1)(a), the Director of Public Prosecutions who has jurisdiction in the area where the incident occurred, must take the decision whether to institute criminal proceedings on behalf of the State. 35
- (2) A person who contravenes any provision of subsection (1) is guilty of an offence and is liable, in the case of a first conviction, to a fine not exceeding five million rand or imprisonment for a period not exceeding five years, and in the case of a second or subsequent conviction, to a fine not exceeding ten million rand or imprisonment for a period not exceeding 10 years, or in both instances to both such fine and such imprisonment, respectively. 40
- (3) Whenever any person is convicted of an offence under subsection (2) and it appears that such person has by that offence caused loss or damage to any organ of state or other person, the court may in the same proceedings at the written request of the Minister, another organ of state or other person concerned, and in the presence of the convicted person— 45
- (a) inquire summarily and without pleadings into the amount of the loss or damage so caused; and 50
 - (b) upon proof of such amount, the court may give judgment therefore in favour of the organ of state or other person concerned against the convicted person, and such judgment shall be of the same force and

effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.

(4) Whenever any person is convicted of an offence under subsection (2), the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order—

(a) the award of damages, compensation or a fine equal to the amount so assessed; or

(b) that such remedial measures as the court may determine must be undertaken by the convicted person.

(5) Notwithstanding anything to the contrary in any other law, a Magistrate's Court shall have the jurisdiction to impose any penalty or any other sanction in terms of this Act.”.

Amendment of Schedule 1 to Act 8 of 2001

16. Schedule 1 to the principal Act is hereby amended—

(a) by the substitution for item 11 of the following item:

“11. The conducting of research [**focussed**] focused on reducing the impact of weather-related natural disasters and on improving [**to**] the quality of the public good services.”; and

(b) by the addition of the following items:

“14. The collection of ambient air quality data over the Republic of South Africa.

15. The provision of ambient air quality forecasts and warning services intended for the general public benefit.

16. To act as the custodian of the SAAQIS.

17. The publication of air quality and air quality-related publications.

18. The management, operation, maintenance and the development of NAAQMN and other ambient air quality-related instruments and computer programs.”.

Amendment of Schedule 2 to Act 8 of 2001

17. Schedule 2 to the principal Act is hereby amended by the addition of the following items:

“12. The provision of specialised ambient air quality forecasts or ambient air quality information services.

13. The provision of services to the air quality management, air quality monitoring or air quality modelling industry.

14. Contracted air quality-related research.

15. The selling of ambient air quality or meteorological information packages.”.

Substitution of Arrangement of Sections of Act 8 of 2001

18. The following Arrangement of Sections is hereby substituted for the Arrangement of Sections of the principal Act:

“ARRANGEMENT OF SECTIONS

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19. This Act is called the South African Weather Service Amendment Act, 2013, and comes into effect on the date two months from the date of publication in the *Gazette* as contemplated in section 81 of the Constitution of the Republic of South Africa of 1996, or such earlier date determined by proclamation by the President in the *Gazette*.”.